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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1982

EDWARD B. CRUMPLER,

Petitioner,

v.

MISSISSIPPI STATE HIGHWAY
COMMISSION,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MISSISSIPPI**

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QUESTION PRESENTED

Whether the Mississippi statutes of limitation as construed by the Mississippi Supreme Court, and under the facts and circumstances of this case, have operated to deny Petitioner reasonable opportunity to exercise his right of action, and are therefore unconstitutional under the Fourteenth Amendment to the United States Constitution.

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**MISSISSIPPI STATE HIGHWAY
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**PETITION FOR A WRIT OF CERTIORARI TO THE
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ORDERS BELOW AND JURISDICTION

Petitioner Edward B. Crumpler seeks review of the decision of the Supreme Court of Mississippi, handed down November 17, 1982, which affirmed the Circuit Court of DeSoto County, Mississippi, in sustaining the demurrer of Respondent, Mississippi State Highway Commission.¹

A Petition for Rehearing was denied by the Supreme Court of Mississippi on December 8, 1982.

¹Mississippi State Highway Commission is a governmental subdivision of the State of Mississippi, created by statute as a public corporation. MISS. CODE ANN. §65-1-19 (1972). Respondent has been represented throughout the proceedings below by the Honorable P. O. Gibson, Assistant Attorney General for the State of Mississippi and by the Honorable Michael Malski, in his capacity as Special Assistant Attorney General. For these reasons, notice to the Attorney General for the State of Mississippi, that 28 U.S.C. §2403(b) may be applicable, is not required.

There was no written opinion handed down by the Supreme Court of Mississippi; the decisions were reported officially at 421 So.2d 1233 (Miss. 1982).

On February 24, 1982, the Circuit Court of DeSoto County, Mississippi, sustained Respondent's demurrer, finding that Petitioner's suit was barred by the Statutes of Limitation of the State of Mississippi and therefore failed to state a cause of action against Respondent. This opinion has not been officially reported; it may be found in the Appendix to this Petition.

This Court has jurisdiction to review the decisions below, pursuant to 28 U.S.C. §1254(1) (1977).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

(1) U. S. CONST. AMEND. XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(2) MISS. CODE ANN. §15-1-7 (1972):

A person may not make an entry or commence an action to recover land except within ten years next after the time at which the right to make the entry or to bring the action shall have first accrued to some person through whom he claims, or, if the right shall not have accrued to

any person through whom he claims, then except within ten years next after the time at which the right to make the entry or bring the action shall have first accrued to the person making or bringing the same. However, if, at the time at which the right of any person to make an entry or to bring an action to recover land shall have first accrued, such person shall have been under the disability of infancy or unsoundness of mind, then such person or the person claiming through him may, notwithstanding that the period of ten years hereinbefore limited shall have expired, make an entry or bring an action to recover the land at any time within ten years next after the time at which the person to whom the right shall have first accrued shall have ceased to be under either disability, or shall have died, whichever shall have first happened. However, when any person who shall be under either of the disabilities mentioned, at the time at which his right shall have first accrued, shall depart this life without having ceased to be under such disability, no time shall be allowed, by reason of the disability of any other person, to make an entry or to bring an action to recover the land beyond the period of ten years next after the time at which such person shall have died.

(3) MISS. CODE ANN. §15-1-9 (1972):

A person claiming land in equity may not bring suit to recover the same except within the period during which, by virtue of section 15-1-7, he might have made an entry or brought an action to recover the same, if he had been entitled at law to such an estate, interest, or right in or to the same as he shall claim therein in equity. However, in every case of a concealed fraud, the right of any person to bring suit in equity for the recovery of land, of which he

or any person through whom he claims may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which the fraud shall, or, with reasonable diligence might, have been first known or discovered.

(4) MISS. CODE ANN. §15-1-49 (1972):

All actions for which no other period of limitation is prescribed shall be commenced within six years next after the cause of such action accrued, and not after.

(5) MISS. CODE ANN. §65-1-49 (1972):

The conveyance or assignment of easements for highway purposes may be made by the owner thereof to the Mississippi State Highway Commission or the board of supervisors of any county for highway purposes. All actions by any person owning any interest in the land involved in such conveyance or assignment accruing as a result thereof must be brought within three years after the date of such conveyance or assignment; provided, however, that the land involved is actually used for highway purposes or notice is posted thereon that it will be for highway purposes within said three-year period, otherwise said period shall be six years from the date of such conveyance or assignment.

The procedure provided hereby with reference to the conveyance or assignment of easements is supplemental to all rights and powers now authorized for and existing under the present law in said commission and boards, and is not intended as a limitation on same in any manner.

STATEMENT OF THE CASE

The trial court sustained Respondent's demurrer on the grounds that the suit was barred by statutes of limitation of the State of Mississippi and therefore Petitioner failed to state a cause of action against Respondent. By Mississippi law, a demurrer admits all facts which are well pleaded. The following has therefore been admitted:

On September 22, 1967, the Mississippi State Highway Commission acquired certain lands from Petitioner for construction of a highway project. Respondent acquired said property by exerting considerable pressure on Petitioner, insisting that the transaction occur very quickly and on Respondent's terms.

Agents for Respondent presented Petitioner with pre-printed forms, already filled out and partially executed, entitled "Fair Market Value Offer", showed Petitioner some blueprints, and gave him an ultimatum to accept the offer.

Initial plans did not include on and off ramps for the highway. Additional land was acquired from Petitioner for the purpose of the construction of the ramps. This second parcel of land was also acquired from Petitioner in an atmosphere of pressure, speed and with boiler-room tactics.

Respondent never explained to Petitioner what a "no-access" easement meant. No working drawings were provided to Petitioner, which would have shown details of the no-access easement. Petitioner had no engineering background and did not comprehend the impact of the construction of the ramps on his remaining property. Respondent and its agents knew what impact the ramps would have on Petitioner's remaining property, and knew that

Petitioner did not understand the nature of the transaction. Respondent took advantage of Petitioner's inexperience.

In the summer of 1971 Petitioner became concerned about the impact which the construction of the ramps would have on access to his remaining property. At that time, construction had not yet been completed. In 1972 it finally became apparent that two (2) valuable pieces of Petitioner's remaining property were landlocked. The construction was completed in 1972.

Petitioner filed suit within ten (10) years of the time when he discovered that some of this remaining property was landlocked. Plaintiff sought to have the deeds voided and the property reconveyed to him, or, in the alternative, fair market value for the property conveyed, and reasonable compensatory damages for his remaining landlocked property.

By demurrer Respondent raised the defense of statutes of limitation, citing four Mississippi statutes. Respondent contended that the suit for damages was barred by the general six-year limitation period, provided by MISS. CODE ANN. §15-1-49 (1972). Respondent further relied on MISS. CODE ANN. §65-1-49 (1972), which is a special statute of limitation providing a three-year limitation period after conveyance of land for highway purposes, unless the land is not used for highway purposes within said three-year period, in which case the limitation period is six years from the date of conveyance.

As to rescission, Respondent contended that a ten-year limitation period applied, provided by MISS. CODE ANN. §15-1-7 (1972); suits in equity to recover land likewise having a ten-year limitation period, MISS. CODE ANN.

§15-1-9 (1972). Respondent argued that Petitioner's cause of action accrued not upon discovery of the damages to Petitioner's property, but upon recordation of the deeds prior to 1971, more than ten years before Petitioner filed suit. In addition, Respondent relied on a Mississippi case holding that the concealed fraud rule does not operate to toll the statutes of limitation where things done appeared of public record, such as recordation of a deed. *McMahon v. McMahon*, 247 Miss. 822, 157 So.2d 494 (1963).

Prior to the hearing on the demurrer, held on November 20, 1981, Petitioner submitted a brief and a rebuttal brief; the issue of reasonableness of limitation periods was raised therein, as well as in oral argument at said hearing.

The final order of the Circuit Court of DeSoto County, Mississippi, was rendered on February 24, 1982, and filed February 25, 1982, sustaining Respondent's demurrer without reference to a specific statute of limitation. It is unclear what statute of limitation the trial court found applicable. There was no finding when the cause of action accrued or whether fraud tolled the statutes in this case.

Petitioner perfected his appeal to the Mississippi Supreme Court, again raising the issue of reasonableness of limitation period, among others. The Supreme Court of Mississippi affirmed the trial court on November 17, 1982, without written opinion.

Petitioner then petitioned for rehearing, raising once again the reasonableness of limitation doctrine, among others. The Supreme Court of Mississippi denied the petition on December 8, 1982, without written opinion.

This petition seeks a writ of review of the Mississippi statutes of limitation, as construed by the Mississippi

Supreme Court, and as applied to Petitioner and others in like circumstances, to determine whether said limitation period(s) is unreasonable and therefore unconstitutional under the Fourteenth Amendment to the United States Constitution.

REASONS TO GRANT THE WRIT

I.

THE STATE COURT BELOW HAS CONSTRUED A STATE STATUTE SO AS TO CONFLICT WITH DUE PROCESS REQUIREMENTS OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION.

Petitioner hereby seeks review of the decision below affirming the trial court. The reasonableness of time limitations imposed by statutes themselves is not at issue. Instead it is the judicial construction of these statutes which has operated unreasonably and harshly, in the facts of this case, to reach a result at variance with due process requirements of the Fourteenth Amendment. Petitioner has effectively been deprived of his property without access to courts for redress.

This Court has recognized that statutes of limitation are necessary for the welfare of society, and clearly in the public interest. But where the state law is unreasonably short or restrictive, there is a constitutional issue at stake. This doctrine was first recognized in *Edwards v. Kearzey*, 96 U.S. 595 (1877) and remains viable today.

The construction² imposed upon these statutes makes the time limitations for Petitioner and others similarly

²The Mississippi Supreme Court did not hand down a written opinion, but merely affirmed the trial court by notice of decision. Thus there is no opinion on which Petitioner may rely for argument. Note also that the trial court in sustaining Respondent's demurrer did so on the grounds that the statutes of limitation of the state barred Petitioner's action. (See Appendix A-1) But the trial court did not find which limitation period applied to the instant case. The trial court did not make a finding when the cause of action occurred or at what date the action became barred. Finally, there was no holding whether the trial court had allowed a tolling of the statutes of limitation for concealed fraud.

situated, not only unreasonably short but also acts to bar such persons from bringing suit several years *prior* to discovery of damages. Such grossly inequitable result was not the intent of the Mississippi legislature in enacting the statutes involved here. This result is instead a judicial gloss, which has protected an overreaching state agency from liability for intentional misconduct.

Other states, with similar statutes of limitation, have chosen not to adopt such a harsh rule, and have taken instead an *ad hoc* approach, examining the entire set of circumstances. In such jurisdictions, the trial courts have not focused merely upon recordation of a deed as the point at which an action accrues, but have examined whether the Plaintiff was accorded a reasonable period in which to bring an action. See *Fletcher v. Fletcher*, 242 Ga. 158, 249 S.E.2d 530 (1978); *American Mining Coal v. Basin & Bay State Mining Coal*, 39 Mont. 476, 104 P. 525 (1909).

Petitioner therefore seeks review by this court, and stresses that the instant Petition is not requesting review of state substantive law, for which the state supreme court is ultimate authority. Instead Petitioner seeks review of an important federal constitutional issue in the decision below, which the state supreme court chose to ignore. Petitioner timely and properly raised the federal question throughout the course of litigation, as shown by the excerpts from Petitioner's pleadings. (See Appendices A-2 through A-7). This Court therefore has jurisdiction to review the decision below on writ of certiorari, pursuant to 28 U.S.C. §1254(1).

II.

PETITIONER REPRESENTS A CLASS OF PERSONS WHO ARE BEING EFFECTIVELY AND INTENTIONALLY LEFT WITHOUT LEGAL OR EQUITABLE REMEDY FOR DEPRIVATION OF PROPERTY, AS A RESULT OF GROSS OVERREACHING BY AN AGENCY OF THE STATE.

Throughout the litigation below, and on appeal to the Supreme Court of Mississippi, Petitioner argued that there was a federal constitutional issue which was of importance to the public. This contention was premised on the view that Petitioner was a member of a class of persons so affected, and not an isolated individual. In his Rebuttal Brief (Appendix A-5), Petitioner directly discussed this issue, and requested the state court to take judicial notice of a long-established practice of the Mississippi State Highway Commission to acquire property, and especially easements, long in advance of actual construction in order to lessen exposure to subsequent litigation. Respondent has intentionally manipulated such transactions to allow the statutes of limitation to run while the unsuspecting landowner is yet unaware of injury to his remaining property. Such unconscionable conduct by an agency of the State of Mississippi should not be allowed, on the grounds that such practice constitutes an unlawful taking of property under the Fourteenth Amendment to the United States Constitution.

CONCLUSION

For the reasons stated, the questions presented merit review by this court by grant of a writ or by summary disposition.

Respectfully submitted,

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8 March, 1983

A-1

**IN THE CIRCUIT COURT OF
DESOTO COUNTY, MISSISSIPPI**

EDWARD B. CRUMPLER *Plaintiff*

vs. **No. 8269**

**MISSISSIPPI STATE HIGHWAY
COMMISSION** *Defendant*

**ORDER SUSTAINING DEMURRERS
(Filed February 25, 1982)**

Defendant, Mississippi State Highway Commission, demurred to the Declaration of Edward B. Crumpler and assigned three defenses to the suit.

The Court heard arguments of attorneys for the parties, studied and considered all legal authority presented on behalf of the parties, and finds as follows:

This suit filed by Plaintiff against the Defendant is barred by the Statutes of Limitation of this state and therefore fails to state a cause of action against the Defendant.

ORDERED this the 24th day of February, 1982.

/s/ Andrew C. Baker,
Circuit Court Judge

**IN THE CIRCUIT COURT OF
DESOTO COUNTY, MISSISSIPPI**

EDWARD B. CRUMPLER *Plaintiff*

vs.

Civil Action No. 8269

**MISSISSIPPI STATE HIGHWAY
COMMISSION** *Defendant*

**PLAINTIFF'S BRIEF IN OPPOSITION
TO DEFENDANT'S DEMURRER
(Filed on November 18, 1981)
(excerpt)**

. . .

II. STATUTE OF LIMITATIONS

A rescission of a contract must be made within a reasonable period of time. However, what is a reasonable period of time under the circumstances, is clearly a question for the trier of fact. Under the circumstances involved, and in view of the many contracts and correspondence between the parties, such reasonable period of time may well be found by the trier of fact not to have expired.

Ryan v. Glenn, 344 F. Supp. 198 (D.C. Miss. 1972), *aff'd*, 489 F.2d 110 (CA 5 1974).

SUPREME COURT OF MISSISSIPPI

EDWARD B. CRUMPLER *Appellant*

vs.

Docket No. 53,975

MISSISSIPPI STATE HIGHWAY

COMMISSION *Appellee*

ASSIGNMENT OF ERROR

(Filed June 5, 1982)

The Trial Court erred in sustaining the demurrer of Defendant by order dated February 23, 1982.

SUPREME COURT OF MISSISSIPPI

EDWARD B. CRUMPLER *Appellant*

vs.

Docket No. 53,975

MISSISSIPPI STATE HIGHWAY

COMMISSION *Appellee*

BRIEF FOR APPELLANT

(Filed June 8, 1982)

(excerpt)

. . .

**2. WHETHER THE STATUTE OF LIMITATION
HAD RUN ON THESE TWO CAUSES OF ACTION,
WAS FOR TRIER OF FACT TO DETERMINE.**

Rescission of a contract must be made within a reasonable period of time. However, what is a reasonable period of time under the circumstances, is clearly a question for the trier of fact.

Ryan v. Glenn, 344 F. Supp. 198 (D.C. Miss. 1972), *aff'd*, 489 F.2d 110 (5th Cir. 1974).

SUPREME COURT OF MISSISSIPPI

EDWARD B. CRUMPLER *Appellant*
vs. Docket No. 53,975
MISSISSIPPI STATE HIGHWAY
COMMISSION *Appellee*

APPELLANT'S REBUTTAL BRIEF

(Filed July 30, 1982)

(excerpt)

. . .

3. In a series of decisions, the Mississippi Supreme Court has developed a doctrine which may be stated as follows:

"The Principle of Concealed Fraud has no application to things that appear of public record."

By way of example, this doctrine appears in cases such as:

Adams v. Belt, 100 So. 191 (MS, 1924)

Aultman v. Kelly, 109 So.2d 344 (MS, 1959)

McMahon v. McMahon, 157 So.2d 494 (MS, 1963)

The reasoning of the doctrine is based upon the thought that if a concealed fraud is incorporated into an instrument which is placed of public record, then an examination of such instrument afford the victim, at least in theory, an opportunity to discover the fraud and therefore, the period of limitations should commence to run when such opportunity to discover the fraud first existed, namely upon the recordation of the instrument. However, this Court should

take judicial notice of a long-established practice of the Mississippi State Highway Commission to acquire property, specifically easements, as long in advance of actual construction and need as possible. This practice is designed to lessen the Commission's exposure to subsequent litigation by causing the statutes of limitation to run upon recordation of the instrument by which the property right is acquired, while, at the same time, not in any way disturbing the possession of the previous landowner and thereby arousing his suspicion until much later, when, hopefully, the statutes of limitation had already run.

To illustrate the effect of this practice on the unsuspecting public, it is conceivable that the Mississippi State Highway Commission can acquire easements, broadly described, in 1980, instructing its agents to discuss the purpose of these easements, and the scope of these easements, in the vaguest possible terms with the landowners, then delaying actual use of these easements until 1991, at which time any applicable statutes of limitation under the present doctrine would have expired, and the landowner would have no remaining cause of action against the Mississippi State Highway Commission regardless of how the purpose and the scope of the easements might have been misrepresented to him at the time these easements were acquired.

In conclusion, it would appear that by indiscriminately applying the doctrine of *Adams*, *Aultman*, and *McMahon*, above, in favor of the Mississippi State Highway Commission, the public, and unsuspecting landowners, would be put at a great disadvantage, and an unfair practice of the Mississippi State Highway Commission would be afforded judicial sanction.

IN THE SUPREME COURT OF MISSISSIPPI

EDWARD B. CRUMPLER *Appellant*

vs.

Docket No. 53,975

MISSISSIPPI STATE HIGHWAY

COMMISSION *Appellee*

PETITION FOR REHEARING

(Filed December 3, 1982)

(excerpt)

Appellant hereby petitions the Court for a rehearing on the grounds that an error of law was committed:

(1) The Court failed to consider the "concealed fraud exception" to the statutes of limitation.

. . .

(b) In this connection, the Court failed to consider the "reasonableness of limitation" doctrine.

IN THE SUPREME COURT OF MISSISSIPPI

EDWARD B. CRUMPLER *Appellant*

vs.

Docket No. 53,975

MISSISSIPPI STATE HIGHWAY

COMMISSION *Appellee*

**APPELLANT'S BRIEF
IN SUPPORT OF PETITION FOR REHEARING
(Filed December 3, 1982)
(excerpt)**

. . .

B| Doctrine of Reasonableness of Limitation

The United States Supreme Court has recognized that statutes of limitation are necessary for the welfare of society, and are clearly in the public interest. But where the period is unreasonably short, or where state law is unreasonably restrictive, there is a constitutional issue at stake. This doctrine was first recognized in *Edwards v. Kearzey*, 96 U.S. 595 (1877), and remains viable today. See 51 Am. Jur. 2d, "Limitation of Actions", §§31-36.

Under the facts of this case, adopting an exception to the concealed fraud exception results in the Mississippi statute of limitation being unreasonable, and unduly restrictive. Moreover, such an interpretation is violative of Appellant's constitutional rights as an impairment of contract and otherwise, under both the United States Constitution and the Constitution of the State of Mississippi.

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Finally, the apparent rule followed in this case is unnecessary; other jurisdictions, having been directly faced with this issue, have instead taken an ad hoc approach, examining the entire set of circumstances rather than focusing on the recordation of an instrument of conveyance. See *Fletcher v. Fletcher*, 242 Ga. 158, 249 S.E.2d 530 (1978); and, *American Mining Coal v. Basin & Bay State Mining Coal*, 39 Mont. 476, 104 P. 525 (1909).